BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

RICHARD K. KEPLER	)	
Claimant	)	
VS.	)	
	)	Docket No. 245,211
NEW YORK AIR BRAKE	)	
Respondent	)	
AND	)	
	)	
UTICA NATIONAL INSURANCE COMPANY	)	
Insurance Carrier	)	

ORDER

Respondent and its insurance carrier appealed the February 9, 2000 preliminary hearing Order entered by Administrative Law Judge Steven J. Howard.

ISSUES

This is a claim for a series of repetitive traumas from February 1 through June 2, 1999, with a specific incident occurring on March 1, 1999. Claimant alleges that while working for the respondent he developed a blister on his foot that became infected and required amputating the right great toe.

This appeal is from the second preliminary hearing Order entered in this proceeding. In the first preliminary hearing Order, which was dated August 4, 1999, Judge Howard found that the claim was compensable. The Appeals Board affirmed that Order.

In the preliminary hearing Order now before the Appeals Board, Judge Howard impliedly found the problems that claimant is presently experiencing with his right second toe are directly related to amputating the great toe and, therefore, claimant is entitled to receive medical treatment for those problems.

Respondent and its insurance carrier contend Judge Howard erred. They argue that claimant did not injure his second toe in a work-related accident and that claimant's problem with that toe is simply the result of his preexisting diabetes.

The only issue before the Board on this appeal is whether claimant's present problems with his right second toe are directly related to amputating the great toe.

FINDINGS OF FACT

After reviewing the record compiled to date, the Appeals Board finds:

1. Claimant developed a blister on his right great toe while working for the respondent between February 1 and June 2, 1999. When the blister did not heal and became infected, the toe was amputated.

2. By preliminary hearing Order dated August 4, 1999, which the Appeals Board later affirmed, the administrative law judge, by granting a preliminary award, impliedly found that claimant had sustained personal injury by accident arising out of and in the course of employment.

3. Claimant now contends that his right second toe requires medical treatment as a direct result of amputating the great toe. In the February 9, 2000 preliminary hearing Order, which is the subject of this appeal, the administrative law judge, by again granting the request for benefits, impliedly found a relationship between claimant's present need for medical treatment and the amputation. The Appeals Board agrees with that conclusion, which is supported by expert medical opinion. In a December 7, 1999 letter to claimant's attorney, orthopedic surgeon F. M. Gilhousen, M.D., stated, in part:

> It is my impression that the surgery [on the right second toe] that we will be performing is directly related to the fact that his great toe was amputated. Mr. Kepler reported to me that the second toe had been a bit longer than the great toe even before the amputation. With the amputation this now becomes significantly difficult in fitting shoes and walking and the toe has started to turn under and give him some pain. It may lead to some ulceration of the tip of the toe.

The Board is aware that claimant saw Roger W. Hood, M.D., at the request of the respondent and its insurance carrier and that the doctor generally believes that claimant's foot problems are not related to work. But a close reading of Dr. Hood's January 6, 2000 report reveals that the doctor may not understand that a preexisting condition that is aggravated by a work-related accident is compensable under the Workers Compensation Act. In this instance, Dr. Gilhousen's opinions are the more persuasive.

CONCLUSIONS OF LAW

1. The preliminary hearing Order should be affirmed.

2. Every direct and natural consequence that flows from a compensable injury, including a new and distinct injury, is also compensable under the Workers Compensation Act. In Jackson,[1] the Court stated:

> When a primary injury under the Workmen's Compensation Act is shown to have arisen out of the course of employment every natural consequence that flows from the injury, including a new and distinct injury, is compensable if it is a direct and natural result of a primary injury. (Syllabus 1.)

3. Because claimant has proven that his present toe problems are related to the work-related injury that he sustained while working for the respondent and the resulting great toe amputation, claimant is also entitled to receive medical benefits under the Workers Compensation Act to treat those problems.

WHEREFORE, the Appeals Board affirms the February 9, 2000 preliminary hearing Order entered by Judge Steven J. Howard.

IT IS SO ORDERED.

Dated this ____ day of March 2000.

BOARD MEMBER

c: James E. Martin, Overland Park, KS
Frederick L. Haag, Wichita, KS
Steven J. Howard, Administrative Law Judge
Philip S. Harness, Director

[1] Jackson v. Stevens Well Service, 208 Kan. 637, 493 P.2d 264 (1972).